



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2466

2006 APR 27 PM 3:07

APR 27 2006

FILED
EPA REGION VIII
RECORDING CLERK

Ref: 8ENF-L

BY CERTIFIED MAIL:
RETURN RECEIPT REQUESTED

Lynn A. Bortka
Senior Attorney
BP America Inc.
501 WestLake Park Boulevard
Houston, TX 77079

Re: Amendment to the Administrative Order
Pursuant to Section 7003 of RCRA,
Docket No. RCRA-08-2006-0003

Dear Mr. Bortka,

This letter transmits an Amendment to the Administrative Order Pursuant to Section 7003 of RCRA for the Produced Water Disposal Facility, Wamsutter, Wyoming, EPA Docket No. RCRA-08-2006-0003 ("Order"), issued on March 10, 2006, to the BP America Production Company and BP America, Inc. ("Respondents"). Pursuant to Section XVI of the Order, Respondents and representatives of the U.S. Environmental Protection Agency ("EPA") held an informal conference at the EPA offices in Denver, Colorado on March 29, 2006. Those discussions addressed the schedule for delivery of the Corrective Measures Work Plan ("CMWP") and for completion of work under the Order. Respondents also raised several concerns with the Findings of Fact in the Order and related matters. On April 21, 2006, more than three weeks after the informal conference, Respondents submitted additional suggested changes to the Order in the form of a proposed Letter Agreement.

The Amendment (attached) incorporates specific dates for submittal of the work plan (May 10, 2006) and completion of work (August 1, 2006), as addressed in Section VII, subsections A.1.a, A.2. and A.4 of the Order. These were the dates discussed at the informal conference March 29, 2006, and represent dates Respondents acknowledged were reasonable. (While Respondents actually indicated that May 3, 2006, was a reasonable deadline for submittal of the CMWP, EPA is providing until May 10, 2006.) Because these dates were moved back from those set forth in the original Order, the Amendment also includes a requirement that the CMWP present a schedule for milestones to mark progress of the work, to ensure completion by



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August 1, 2006. No other requirements or deadlines in the Order are affected by the modifications specified in this Amendment. The Amendment has been filed with the EPA Region 8 Hearing Clerk.

Respondents' proposed Letter Agreement, submitted by email on April 21, 2006, transmitted other concerns and proposed changes to the Order that EPA does not accept. Many of these issues were not raised by Respondents at the informal conference. In general, your proposed changes relate to the following provisions of the Order: 1) Findings of Fact (Section IV); 2) the timetables for deliverables and content of the CMWP (Section VII.A.1. - 4.); 3) procedures for EPA approval of the CMWP and EPA's authority to order emergency and additional work under the Order (Sections VII.A.9. and 11, VII.B. and VII.C.); and 4) the proposed Letter Agreement.

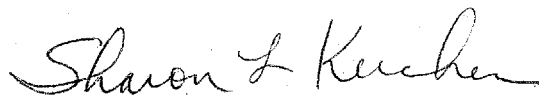
EPA responds in general to your concerns and proposed Letter Agreement as follows: First, EPA believes that the proposed changes to the Findings of Fact are unwarranted because, as we discussed, the Findings in the Order are based on, and/or directly refer to, information established in the Administrative Record. Respondents have presented no documentation or additional information to support modification of the Findings of Fact. Second, timetable and work plan content issues are addressed in the Amendment filed by EPA, based on our discussions with Respondents, as explained in this letter. Based on those discussions, EPA believes the deadlines as modified are reasonable and necessary to ensure protection of the Fall bird migration. Third, your suggested language reserving rights to judicially challenge an agency-approved CMWP would appear to propose granting Respondents pre-enforcement review of the Order. This is contrary to EPA's longstanding position on this issue. In addition, as provided in Section XIV of the Order, EPA retains all of its statutory authority, among other things, regarding requiring Respondents to take "immediate action" or "additional work". Thus, these provisions of the Order are appropriate as originally issued.

In regard to the proposed Letter Agreement, your suggested changes altering the effective date of the Order and modifying the timing for Respondents to provide notification of their intent to comply are unnecessary in light of the clear language of the Order. Section XX.A. of the Order clearly establishes when the Order is effective. Regarding notification of intent to comply, pursuant to Section XVII of the Order, Respondents were required to provide written notice to the EPA attorney, James Stearns, at the contact information provided in the Order, within twenty-four (24) hours from the date of the informal conference, i.e., by no later than March 30. Pursuant to Section XVII.B. of the Order, failure to provide notification to the EPA attorney of your intent to comply within this time period is a violation of the Order. EPA urges you to promptly provide this notification.



If you have any questions regarding this matter, please call Randy Lamdin at (303) 312-6350, or for questions regarding legal issues, please contact Jim Stearns, of EPA's Legal Enforcement Program, at (303) 312-6912.

Sincerely,



Sharon L. Kercher, Director
Technical Enforcement Program

Enclosure: Amendment to the Order

cc: Jack Engstrom, BP America Production Company
Randy Lamdin, 8ENF-RC
Jim Stearns, 8ENF-L



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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2006 APR 27 PM 3:06
FILED
EPA REGION VII
HEARING CLERK

IN THE MATTER OF:)
)
BP America Production Company)
BP America, Inc.)
Produced Water Disposal Facility)
Wamsutter, Wyoming 82336)
)
EPA ID No. WYR000202994)
)
Respondents.)
_____)

AMENDMENT TO ADMINISTRATIVE
ORDER PURSUANT TO SECTION 7003
OF RCRA

Docket No.: RCRA-08-2006-0003

Pursuant to Section XVI.C. of the Administrative Order Pursuant to Section 7003 of RCRA, issued to BP America Production Company and BP America, Inc., for the Produced Water Disposal Facility, Wamsutter, Wyoming, EPA Docket No. RCRA-08-2006-0003 ("Order"), EPA makes the following modifications to the Order:

Section VII.A.1.a. of the Order ("Corrective Measures") is hereby modified to read as follows:

1. a. Respondents shall have completed all work hereunder, including all work set forth in the Corrective Measures Work Plan ("CMWP"), as approved by EPA pursuant to this Order, by no later than August 1, 2006.

Section VII.A.2. of the Order is hereby modified to read as follows:

2. By no later than May 10, 2006, Respondents shall evaluate all corrective measures necessary at the Facility to protect wildlife, including migratory birds and endangered and threatened species, develop a CMWP, and submit such CMWP to EPA for approval. The CMWP shall provide a detailed description of:
 - a. the selected corrective measures and a schedule for completion of interim milestones to ensure the corrective measures will be installed and fully operational by no later than August 1, 2006;
 - b. an operations and maintenance plan which will result in uninterrupted effectiveness of the chosen corrective measures; and
 - c. the names and qualifications of the personnel and contractor(s) to be used in carrying out the work required by this Order. The CMWP shall demonstrate that the personnel and contractor(s) possess all appropriate qualifications.

Section VII.A.4. of the Order is hereby modified to read as follows:

4. The CMWP shall specify that the corrective measures set forth in Section VII. A.1-3. above shall be implemented, fully installed and operational by no later than August 1, 2006, or by no later than twenty-one (21) days after EPA approval of the CMWP pursuant to this Order.

No other requirements or deadlines in the Order are affected by the modifications set forth in this Amendment.

IT IS SO ORDERED:

ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Date: April 27, 2006

By: Sharon L. Kercher
Sharon L. Kercher, Director
Technical Enforcement Program

Date: 27 April 2006

By: Michael T. Risher for MTR
Michael T. Risher, Director
Legal Enforcement Program

CERTIFICATE OF SERVICE

Docket No. RCRA-08-2006-0003

Respondents: BP America Production Company; and BP America Inc.

I hereby certify that the original and a true copy of the attached Amendment to Administrative Order Pursuant to Section 7003 of RCRA was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent by Certified Mail, Return Receipt Requested, to:

C. Jack Engstrom
Field Environmental Coordinator
BP America Production Company
P.O. Box 157
Wamsutter, Wyoming 82336

Jerry L. Austin, Manager
Wamsutter Operations Center
BP America
P.O. Box 157
Wamsutter, Wyoming 82336

and to counsel for BP America Production Company and BP America Inc.:

Lynn A. Bortka
Senior Attorney
BP America Inc.
501 WestLake Park Boulevard
Houston, Texas 77079

and to:

CT Corporation Systems
Agent for BP America Production Company
1720 Carey Avenue, Suite 200
Cheyenne, Wyoming 82001

CT Corporation Systems
Agent for BP America Inc.
1720 Carey Avenue, Suite 200
Cheyenne, Wyoming 82001

Dated: 4/27/06

By: Judith M. McTernan